

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Fruitridge Vista Water Company, a trust, for an order: 1) establishing a moratorium on new service connections; and 2) clarification of Tariff Rule 15 regarding payment for new facilities servicing new applicants.	Application 05-10-005 (Filed October 7, 2005)
Sacramento Housing and Redevelopment Agency and the Housing Authority of the County of Sacramento,  Complainants,  vs. Fruitridge Vista Water Company,  Defendant.	Case 05-10-007 (Filed October 11, 2005)
County of Sacramento,  Complainant,  vs. Fruitridge Vista Water Company,  Defendant.	Case 05-10-011 (Filed October 7, 2005)
David R. Gonzalez & Donna L. Gonzalez,  Complainants,  vs. Fruitridge Vista Water Company,  Defendant.	Case 05-09-011 (Filed September 6, 2005)
Mercy Properties California,  Complainant,  vs. Fruitridge Vista Water Company,  Defendant.	Case 05-09-012 (Filed September 6, 2005)
Victoria Station, LLC,  Complainant,  vs. Fruitridge Vista Water Company,  Defendant.	Case 05-09-027 (Filed September 22, 2005)
Park Place LLC,  Complainant,  vs. Fruitridge Vista Water Company,  Defendant.	Case 05-11-015 (Filed November 15, 2005)

**DIVISION OF RATEPAYER ADVOCATES' RESPONSE TO  
MOTION TO MODIFY**

## **I. INTRODUCTION**

The Division of Ratepayer Advocates (DRA) opposes the Fruitridge Vista Water Co. (FVWC) et al.'s motion to modify its proposed settlement (FVWC Motion). While ostensibly purporting to change the proposed settlement of record, it is tantamount to a petition to modify the Proposed Decision (PD) by altering the PD's factual findings and asking the Commission to adopt a new settlement provision. DRA moves for a Commission order dismissing FVWC's Motion as procedurally improper, moot, and unreasonable.

## **II. BACKGROUND**

On April 5, 2006, the FVWC Motion was filed substituting in place of the paragraph that the Proposed Decision (PD) deletes,<sup>1</sup> the following:

In the event that Fruitridge Vista is able to recover monies directly from polluters, the parties agree that plant funded by these monies , up to \$5.0 million, will be ratebased and earn a return of 10%. . . . California Public Utilities Commission approval of this settlement means that this ratebase treatment of Fruitridge Vista plant, up to \$5.0 million, is not subject to future litigation, either in response to an advice letter or in future general rate cases or otherwise. . . In the event that Fruitridge Vista is able to recover monies directly from polluters in litigation and invest the money into the system in excess of \$5 million, the parties are free to litigate the appropriate ratemaking treatment of assets financed by those funds in excess of \$5 million.

DRA is puzzled how the FVWC Motion amounts to any change. By disassociating \$5 million of speculative recovery from FVWC's repayment to DHS, FVWC purports to meet the PD's objection that FVWC is rate basing public grant monies. However, under both the old and the new settlement proposals, FVWC must repay DHS \$5 million if FVWC recovers sufficient damages from in its pollution lawsuit. Nothing in FVWC's Motion obviates this fact.

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<sup>1</sup> See *FVWC Motn* at 3-4.

FVWC's objective remains the same, i.e., to rate base \$5 million in public grant monies. The Motion merely masks that intent by offering to defer such rate base increase.

Further, FVWC Motion retains the same disagreeable provision advanced by the settlement of record that would have the Commission unconditionally approve the \$5 million rate base increase, waive requiring FVWC to prove the justification and reasonableness of the resulting rate shocks to ratepayers, and assume as established fact a hypothetical and speculative future outcome of FVWC's pollution lawsuit.

Therefore, the FVWC Motion is disingenuous. While on the hand appearing to respond to the PD's objections, it actually maintains the same objectives and onerous rate burdens as the settlement of record is proposing. The Commission should dismiss the FVWC Motion.

### **III. AUTHORITIES AND ARGUMENTS**

#### **A. The FVWC Motion violates Commission policy and procedures and should be dismissed**

Pursuant to Rule 77.7 and Section 311(d), the PD provides for comments to be filed within 20 days of mailing so that the Commission can consider the PD at its meeting on April 27, 2006. Article 19 of the Rules, of which Rule 77.7 is a part, generally provides the procedures for "submission of any proceeding for a decision by the Commission." Those procedures, which are designed to afford fairness, notice, and an opportunity to be heard to all parties, only provide for parties' comments on the PD at this juncture in the proceeding. They do not allow parties to move for an alteration of the record and the PD. Thus, FVWC's Motion should be rejected as procedurally improper.<sup>2</sup>

In this case, the evidentiary hearing has ended; the Parties have addressed the issues presented by the Scoping Memo and the Parties' testimonies in opening and closing briefs; and the Commission has stated, "the case will be deemed submitted for decision after receipt of reply briefs." The FVWC Motion fails to cite any legal

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<sup>2</sup>TR 158:25 – 26, ALJ G. Walker/ Comm.

authorities supporting its highly unusual and unprecedented move to alter the record. Therefore, the FVWC Motion does not comport with due process. It is sandbagging which the Commission should not tolerate.

The FVWC Motion is equivalent to a petition to modify. According to Rule 47, a petition for modification is only appropriate when a proceeding has been submitted to the Commission for a decision and the Commission has issued a decision. In this case, FVWC is jumping the gun. The Commission has not decided this proceeding. FVWC Motion is therefore premature, unjustified, and legally invalid, and should be dismissed.

**B. The FVWC Motion is moot, unreasonable, and not in the public interest.**

The PD holds that Commission processes are available to FVWC to seek appropriate rate recovery, if and when in the future FVWC were to recover pollution damages and wants rate recovery for its lawsuit:

[W]e do not preclude the utility from seeking appropriate recovery for that investment in its next general rate case or in another proceeding. We also do not preclude the utility from asserting, in an appropriate proceeding and based on then-existing facts, that a DHS grant that has been refunded by the utility is entitled to ratemaking treatment outside the prohibitions of D.06-03-015.

The PD has already spoken to the FVWC Motion's rate base proposal which is therefore moot. In a future Commission ratemaking review process, FVWC would have the burden of justifying the reasonableness of including \$5 million in rate base and increasing the ratepayers' burdens. Apparently, this concerns FVWC, because the FVWC Motion as well as the settlement of record wants advance and unconditional Commission approval — without establishing the pertinent facts as a matter of record, without having a reasonableness and prudence review, and without giving ratepayers an opportunity to be heard.

FVWC is not interested in Commission policies and procedures. FVWC wants the Commission to dispense with its Constitutional and statutory reviewing responsibilities. The FVWC Motion continues to insist upon the same highly objectionable provision in

the settlement of record that would bind the Commission's hands and bar any legal challenges in any future ratemaking proceedings or judicial hearings, once the Commission adopts FVWC's "phantom" ratebase. The Commission cannot countenance this blatant usurpation of its reviewing and decision-making authority, or sanction the abolition of ratepayers' constitutional and statutory notice and due process rights. Dismissing the FVWC Motion is the only response to such extreme proposals.

#### **IV. CONCLUSION**

The FVWC Motion is "old wine in a new bottle." The abuses engendered by the settlement of record are not removed simply by deleting reference to FVWC's duty to repay DHS in the proffered substitution. The FVWC Motion remains as fundamentally flawed as FVWC's initial proposal. In both instances, FVWC basically wants the Commission to abandon its ratemaking, review processes; arbitrarily and capriciously decide based on speculative, unpredictable, future events; and dispense with the public's rights to fair notice, due process, and an opportunity to be heard. For the reasons stated herein and in DRA's testimony and briefs, the Commission should dismiss the FVWC Motion.

Respectfully submitted,

/s/ CLEVELAND W. LEE

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April 11, 2006

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of **DIVISION OF RATEPAYER ADVOCATES' RESPONSE TO MOTION TO MODIFY** in Application 05-10-005 et al. by using the following service:

[X] **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

[X] **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on April 11, 2006 at San Francisco, California.

\_\_\_\_\_/s/ **NANCY SALYER**  
Nancy Salyer

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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